

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE MILES BENTON,
Plaintiff,
v.
CLINGMAN, *et al.*,
Defendants.

No. 2:22-cv-02275-JDP (PC)

ORDER

Plaintiff has filed a motion seeking both an extension of time to file an amended complaint and the appointment of counsel. ECF No. 22. I will grant plaintiff additional time to file an amended complaint.

As for the appointment of counsel, district courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. *Mallard v. U.S. Dist. Ct.*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The burden of

1 demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances common to most
2 prisoners, such as lack of legal education and limited law library access, do not establish
3 exceptional circumstances that warrant a request for voluntary assistance of counsel. Having
4 considered the factors under *Palmer*, the court finds that plaintiff failed to meet his burden of
5 demonstrating exceptional circumstances warranting the appointment of counsel at this time.

6 Good cause appearing, it is hereby ORDERED that:

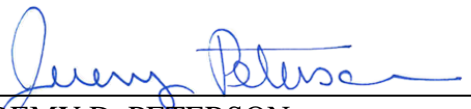
7 1. Plaintiff's motion for an extension of time, ECF No. 22, is granted.

8 2. Plaintiff is granted forty-five days from the date of this order in which to file an
9 amended complaint.

10 3. Plaintiff's motion for the appointment of counsel, ECF No. 22, is denied without
11 prejudice.

12 IT IS SO ORDERED.
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14 Dated: August 3, 2023

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16 JEREMY D. PETERSON
17 UNITED STATES MAGISTRATE JUDGE
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